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Attorneys for defendant SAN CARLOS INN, L.P.
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6 **UNITED STATES DISTRICT COURT FOR THE**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 Case No. 19-cv-00061-SK

9 SCOTT JOHNSON,

Plaintiff,

10 v.

11 SAN CARLOS INN, a California
12 Limited Partnership; and Does 1-10,
Defendants.,

13 Defendant.
14

**DEFENDANT'S NOTICE OF NON-
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

1 Defendant San Carlos Inn, L.P. hereby gives notice that plaintiff Scott Johnson has
2 failed to file any Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter
3 Jurisdiction on or before December 12, 2019 as ordered by this Court on November 14,
4 2019 [ECF 29]. The Court should note that this is the *second* time that Johnson has failed
5 to oppose the Motion to Dismiss filed by defendant. After Johnson failed to timely file any
6 opposition, this Court issued an Order to Show Cause on November 4, 2019 [ECF 23],
7 stating that if Johnson failed to file an opposition on or before November 8, 2019, "the
8 Court will grant Defendant's motion to dismiss as unopposed and/or dismiss Plaintiff's
9 claims for failure to prosecute without further notice."

10 Johnson thereafter filed his Opposition, which raised only procedural arguments that
11 have either been rejected in other *Johnson* cases, such as Johnson's claim that General
12 Order 56 barred consideration of a motion to dismiss for lack of subject matter jurisdiction,
13 or the plainly false statement that Johnson had not conducted a site inspection, when
14 Johnson had conducted a site inspection on July 10, 2019 and found that any alleged
15 violations had been remediated. Rather than rule on the Motion to Dismiss with no
16 essential opposition to it, this Court issued another Order dated November 14, 2019,
17 rejecting all of Johnson's procedural arguments and ordering Johnson to respond
18 substantively to the merits of the Motion to Dismiss on or before December 12. Johnson
19 failed to file any opposition.

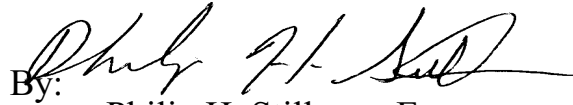
20 It is obviously the plaintiff's burden to establish subject matter jurisdiction at each
21 step of the proceeding. Now, a week after any opposition was due, Johnson has again
22 failed to file any opposition. That is understandable since there is no disputed issue of fact
23 that any alleged ADA violations were corrected prior to the July 10, 2019 site inspection.
24 Accordingly, defendant San Carlos, L.P. respectfully requests that this Court vacate the
25 January 27, 2020 hearing date set in the November 14, 2019 Order, and now grant the
26 Motion to Dismiss for Lack of Subject Matter Jurisdiction as unopposed, pursuant to
27 Fed.R.Civ.P. 12(h)(3) and 12(b)(1).
28

1 WHEREFORE, defendant respectfully requests that this court (1) vacate the January
2 27, 2020 hearing date and (2) dismiss the complaint for lack of subject matter jurisdiction
3 pursuant to Fed.R.Civ.P. 12(c) forthwith.

4 Respectfully Submitted,

5 STILLMAN & ASSOCIATES

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7 Dated: December 19, 2019

8  By:

9 Philip H. Stillman, Esq.
10 Attorneys for defendant SAN CARLOS INN, L.P.
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PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on December 19, 2019 or as soon as possible thereafter, copies of the foregoing Notice of Non-Opposition was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

By: /s/ Philip H. Stillman
Attorneys for defendant